Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment to the Commission's	)	
Regulatory Policies Governing	)	IB Docket No. 95-41
Domestic Fixed Satellites and	)	
Separate International Satellite	)	
Systems	)	

COMMENTS

Constellation Communications, Inc. ("Constellation"), by its attorney, files these Comments in response to the Commission's Notice of Proposed Rulemaking ("Notice")[1] that seeks to eliminate the distinction between the Commission's Transborder and Separate International Satellite Systems Policies in the fixed-satellite service ("FSS").

Constellation is an applicant for a low-Earth orbit ("LEO") satellite system in the 1610-1626.5 MHz and 2483.5-2500 MHz bands allocated to the mobile-satellite service ("MSS").[2] Although the specific proposals advanced in the Notice pertain to the FSS using the geostationary satellite orbit ("GSO"), the Commission poses several questions relating to the MSS.[3] In particular, these questions relate to the extent to which the Communications Satellite Corporation ("COMSAT") and the International Mobile Satellite Organization ("Inmarsat") should be permitted to serve the United States market. For the reasons set forth below, Constellation believes that it would be premature to extend the policies being proposed in the Notice beyond the GSO FSS market into the MSS market.

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[1] FCC 95-146 released April 25, 1995.

[2] See Application File Nos. 17-DSS-P-91(48) and CSS-91-013, as amended on November 16, 1994.

[3] See Notice at paras. 38-39.

I. It Is Premature To Allow Comsat or Inmarsat To Serve The United States Market Because Of The Current Uncertainties In The Foreign Market Access To Be Afforded To United States Licensed MSS Systems

In the Notice, the Commission relates the long and difficult experience that has been gained with its Transborder Policy since 1981[4] and its Separate System Policy since 1984[5] as a result of the preferred status afforded Comsat and the International Telecommunications Satellite Organization ("Intelsat") under the Communications Satellite Act and the Intelsat Agreement. Most of the early barriers to entry into foreign markets by United States Licensed GSO FSS systems have been eliminated after extensive consultations between the United States and foreign and international systems with respect to technical compatibility and potential economic harm. Moreover, the Commission also indicates that most of the uncertainty in gaining landing rights in other countries has been eliminated,[6] and the GSO FSS market can now apparently be characterized by a multiplicity of suppliers and an abundance of capacity.[7] With this broad scope of experience and mature stage of market development, it may now be appropriate to remove the regulatory distinctions between domestic and international GSO FSS systems as proposed in the Notice.

However, the situation is much different in the emerging MSS market. Although the Inmarsat system has been in operation since 1979, it has been the only MSS system available

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[4] Id. at paras. 4-8.

[5] Id. at paras. 10-12.

[6] Id. at para. 29.

[7] Although the Commission indicates that several systems have been authorized to provide both FSS and MSS in the United States in support of its characterization of a diverse FSS market (see Notice at paras. 21-31), the conditions in the MSS market and frequency bands are much different since FSS facilities and frequency bands are generally unsuitable for MSS services.

in the world for commercial maritime, aeronautical and land mobile communications by satellite. The Commission has authorized only the American Satellite Corporation ("AMSC") to construct a domestic GSO MSS system,[8] but this system is not yet in commercial operation. Nor has a satisfactory frequency coordination arrangement for this system been reached with Inmarsat.[9] In short, the MSS market in the United States does not yet have a competitive supply of space segment capacity.[10]

That situation is just now beginning to change. The AMSC system is scheduled to become operational in the near future. Several LEO MSS systems are currently being implemented to provide a full range of MSS and personal communication services in the 1.6/2.4 GHz bands and at frequencies below 1 GHz, and other applications are pending. In addition to its GSO MSS satellites, Inmarsat has spun off an affiliate to operate a non-GSO MSS system in the 2 GHz MSS bands. However, it will still be several years before all of these systems are in full operation and the Commission can characterize the MSS market in the same terms as it is describing the GSO FSS market today.

The same regulatory issues are raised by Comsat as the sole United States signatory in Inmarsat as were posed earlier by Comsat's role as sole Intelsat signatory. Thus, all United States licensed MSS systems currently face the same potential barriers to entry into foreign markets from the Inmarsat signatories that the United States licensed GSO FSS systems initially faced from the Intelsat signatories in terms of competition with an

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[8] See Memorandum Opinion, Order and Authorization, FCC 89-183 released August 4, 1989.

[9] See Notice at para. 39.

[10] There is also some MSS service being provided today by Qualcomm using GSO FSS satellites in order to provide a low speed data service to trucks and other vehicles. There was competition for a period of time in this limited MSS market for low speed data services between Geostar Corporation and Qualcomm, but that competition ended when Geostar filed for bankruptcy.

international system established under a treaty, mandatory technical and economic harm consultations, and access to foreign countries to provide service. Until these issues have been resolved favorably for United States licensed MSS systems, as apparently has been done for the GSO FSS systems, Constellation believes that it is premature to consider allowing Comsat and Inmarsat access to the United States market.

II. There Are Several Other Pending Matters That Must Be Resolved Before The Commission Can Address The Question Of Whether Comsat And Inmarsat Should Be Allowed Access To The United States MSS Market

There are several matters currently pending before the Commission which directly relate to competition between United States licensed MSS systems and Inmarsat. Each of these proceedings must be satisfactorily resolved before the Commission can address possible access to the United States MSS market by Comsat or Inmarsat.

First, there are issues relating to the provision of MSS using GSO satellites in the 1.5/1.6 GHz MSS bands. Although the AMSC system was initially authorized in 1989 to provide domestic MSS services and the Inmarsat-3 GSO MSS series of satellites is scheduled to be launched later this year, there is as yet no satisfactory frequency coordination agreement between these systems.[11] Moreover, any use of the Inmarsat system for services in the United States has been very limited.[12] Just recently, AMSC filed an application to

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[11] See Notice at para. 39.

[12] See e.g., Report and Order in CC Docket No. 87-75, 4 FCC Rcd 6072 (1989) (reconsideration pending).

provide international service over its system[13] and Comsat filed an application to provide service within the United States using the Inmarsat system.[14]

Second, there is the Comsat application to participate in the I-CO Global Communications Limited System ("I-CO").[15] This application raised serious issues with respect to compliance with the Commission's Inmarsat-P Declaratory Order[16] with respect to Comsat's participation in Inmarsat procurement of I-CO capacity for maritime and aeronautical services, and with respect to the extension of Comsat's exclusionary status as Inmarsat signatory and its consequent legal authority to invest directly in I-CO as an Inmarsat line of business under the principles established in the Comsat Study[17]. Moreover, serious questions exist with respect to the ability of the initial investors in I-CO, and the other Inmarsat signatories who retain rights to resell I-CO capacity in their countries, to act in an anti-competitive manner and inhibit access to these foreign markets by competitive United States licensed LEO MSS systems.

Third, United States licensed LEO MSS systems will require the completion of suitable frequency coordination agreements, including access for user terminals and gateway earth stations in individual countries, as well as operating agreements to establish national

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[13] See application file No. ITS-95-280 (April 4, 1995).

[14] See application File No. ITC 95-341 (May 11, 1995). In fact, comments on Comsat application are not due until June 25, 1995.

[15] See Application File No. ISP-95-003 (May 1, 1995). Comments on this application are not due to be filed until June 9, 1995.

[16] In re Petition of Motorola Satellite Communications, Inc. for Declaratory Ruling Concerning Participation by COMSAT Corporation in a New Inmarsat Satellite System Designed to Provide Service to Handheld Communication Devices, 9 FCC Rcd 7693 (1994).

[17] In re Comsat Study - Implementation of Section 505 of the International Maritime Satellite Telecommunications Act, 77 FCC 2d 564 (1980).

and regional affiliates and interconnection arrangements with the national public switched network throughout the world. The Commission has not yet indicated the scope of any technical compatibility and/or economic harm consultations to be conducted under Article XIV of the Intelsat Agreement or Article 8 of the Inmarsat Agreement for United States licensed MSS systems.[18] Moreover, as noted above, Inmarsat signatories, whether I-CO investors or not, have the incentive and are in a position to inhibit or delay access to their national markets by competing LEO MSS systems in order to protect their Inmarsat interests.

Finally, there are still unresolved frequency allocation issues that will affect the development of United States licensed MSS systems and the Inmarsat/I-CO system. One issue is the availability of feeder link bands, which will not be decided until later this year at the 1995 World Radio Conference ("WRC"). Both United States LEO MSS systems will have to share the same set of feeder link bands. Also, the I-CO system proposes to use the 2 GHz MSS frequencies allocated by the 1992 World Administrative Radio Conference ("WARC"). However, all of these frequencies may not be available in the United States and these allocations are currently under review in both domestic proceedings[19] and WRC-95 preparations. Thus, a final resolution of at least some of the outstanding questions relating to technical compatibility and efficient spectrum usage may have to await the results of the 1995 or perhaps a later WRC.

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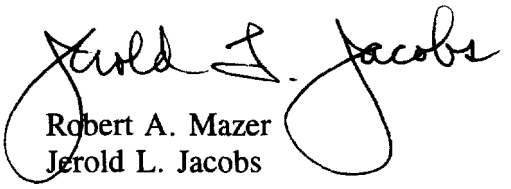
[18] See Notice of Proposed Rulemaking, in CC Docket No. 92-166, FCC 94-11 released February 18, 1994, at note 2.

[19] See Notice of Proposed Rulemaking, in ET Docket No. 95-18, FCC 95-36 released January 31, 1995. In addition, applications to construct domestic GSO MSS satellite systems in these bands have already been filed by Celsat, Inc. and Personal Communications Satellite Corporation.

CONCLUSION

In summary, Constellation believes that the dominant position of Inmarsat and its signatories in the MSS market presents significant barriers to the development of United States licensed MSS systems throughout the world. Until United States licensed systems have achieved in fact the same access to spectrum and foreign markets on a worldwide basis as Inmarsat, Constellation believes that it is premature to allow Comsat or Inmarsat to serve the United States market.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Jerold L. Jacobs, hereby certify that the foregoing "Comments" by Constellation Communications, Inc. was served by hand or first-class mail, postage prepaid, this 8th day of June, 1994, on the following persons:

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